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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,166

02/12/2004

Bart Gerard Boucherie

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3778

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BACON & THOMAS, PLLC

625 SLATERS LANE

FOURTH FLOOR

ALEXANDRIA, VA 22314-1176

EXAMINER

KARLS, SHAY LYNN

ART UNIT

PAPER NUMBER

3723

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/776,166	<b>Applicant(s)</b> BOUCHERIE, BART GERARD	
	<b>Examiner</b> Shay L. Karls	<b>Art Unit</b> 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 12/15/08 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-2, 4, 6, 8, 10, 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Weihrauch (USPN 5176427).**

Weihrauch teaches a method of manufacturing brushes comprising the steps of placing a bundle of fibers (9) loosely in a holder (10). The fibers have far ends protruding from the holder and subjected to an end grinding process (1). The free ends opposite the far ends rest on an underlying support (col. 6, lines 53-56 state that the fibers could be attached to a bristle carrier rather than being placed in the fixing device 7; thus the free ends are resting within the bristle carrier). The far ends of the fibers are brought into contact with the processing equipment while the fibers are loosely held in the holder (figure 5a-5c) show that the end grinder moves vertically). Once the end grinding process is complete the far ends of the fibers are removed from the grinder (the grinder is moved away from the bristles). A length of the far ends between the holder and the processing equipment is varied

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during the end grinding process (figure 5b shows that the distance between the fibers and the grinder is greater than the distance shown in figure 5c).

With regards to claim 2, the fibers are initially put in contact with the grinder with a smaller amount of freedom of movement at the end ends, and the free of movement at the far ends is enlarged afterwards. The grinder moves away from the fibers when complete and therefore the freedom of movement of the bristles increases when grinding is over.

With regards to claim 4, the fibers are placed in an opening in the holder (figure 5a-5c).

With regards to claim 6, the distance between the processing equipment and a side of the holder from where the fibers protrude is enlarged, while the contact between the free ends of the fibers and the processing equipment is maintained. The grinder is movable vertically, and therefore the distance can vary as deemed necessary by one of skill in the art while still remaining contact between the grinder and the fibers.

With regards to claim 8, the processing equipment is initially situated at a first distance from the side of the holder from which the fibers protrude, and in a subsequent step the distance is increased. When the grinding process is over, the grinder is moved away from the holder.

With regards to claim 10, the processing equipment will first be positioned up to a certain distance from the side of the holder from which the fibers protrude and the fibers are subsequently brought into contact with the equipment with their far ends (figure 5a-5b).

With regards to claim 12, the processing is used to end round the fibers.

With regards to claim 13, the processing is grinding.

With regards to claim 14, the method is used to make toothbrushes.

With regards to claim 15, the method is used in combination with a holder (10) for pushing the fibers in a longitudinal direction (arrow in figure 6a and 6b).

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With regards to claim 16, bundles of fibers are placed in a holder (10) as a function of a fiber bundle pattern of a brush or a brush part to be manufactured. After the fibers are in the holder, they are further processed to fix the fibers in a brush body (col. 6, lines 53-56).

**Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weihrauch as applied to claim 1 above.**

Weihrauch teaches all the essential elements of the claimed invention however fail to teach that the free length of the fiber is smaller than 1 millimeter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Weihrauch so that the length of the fiber is less than 1 millimeter as stated in claims 7 and 9, since the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device. A method with a device having the claimed relative dimensions would not perform differently than the prior art device and therefore, the method and the claimed device is not patentable distinct from the prior art (MPEP 2144).

**Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weihrauch as applied to claim 1 above and further in view of Boucherie (USPN 6290303).**

Weihrauch teach all the essential elements of the claimed invention however fail to teach that a push-out element is used to change the free length of the fibers. Boucherie ('303) teaches using a push-out element (24) for changing the free length of bristles (4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Weihrauch so that there is a push-out element is used as taught by Boucherie ('303) for pushing the fibers bundles into the holder so that various fiber bundle arrangement can be obtained, such as angled bristles or bristles of various lengths (col. 5, lines 29-41).

**Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weihrauch as applied to claim 1 above and further in view of Boucherie (USPN 5728408).**

Weihrauch teaches all the essential elements of the claimed invention however fails to teach that the fibers are separated from a fiber stock by means of a holder and temporarily remain in the holder to be further process (claim 17). The reference also fails to teach a rotating bundle remover (claim 18) with take up openings (claim 19) and after the processing is complete the fibers are placed in a cartridge (claim 20). Boucherie teaches a bundle of fibers that are separated from a fiber stock by means of a holder and temporarily remain in the holder to be processed subsequently. There is further a holder with a rotating bundle remover and has a plurality of take up openings for receiving fiber bundles. There are take-up openings are partly filled in the holder. Figure 9 shows all but three openings filled. The processed fiber bundles are released into a cartridge (51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Weihrauch so that it comprises the processing equipment as taught by Boucherie since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

The examiner would also like to point out that the term loosely is a relative term and it is unclear what the fibers are considered loosely held relative to. Therefore the fibers of Weihrauch are

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considered to be loosely held within the openings in the holder relative to fibers that are held in place by a clamping means.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Karls whose telephone number is 571-272-1268. The examiner can normally be reached on 7:00-4:30 M-W.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shay L Karls/  
Primary Examiner, Art Unit 3723